

July 17, 2023

PCAOB
Office of the Secretary
1666 K Street, NW
Washington, DC 20006-2803

Email: comments@pcaobus.org

RE: Request for Comments on PCAOB Release No. 2023-003 – Proposing Release: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations

PCAOB Board:

The views expressed herein are written on behalf of the Professional Standards Committee (PSC) of the Texas Society of CPAs. The committee has been authorized by the Texas Society of CPAs' Leadership Council to submit comments on matters of interest to the membership. The views expressed in this document have not been approved by the Texas Society of CPAs' Leadership Council or Board of Directors and, therefore, should not be construed as representing the views or policy of the Texas Society of CPAs. Please find our responses below to the request for comment.

The PSC does not support the proposed amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations (the Amendments). We believe the Amendments are not operable in conjunction with a financial statement audit for the following principal reasons:

1. The Amendments are a significant scope expansion beyond the current requirements of a financial statement audit and eliminate the long-standing critical distinction of direct and indirect auditor responsibilities around illegal acts (now referred to as laws and regulations). The distinction is important because it necessarily separates the financial statement audit from operational compliance. The proposed requirement for the auditor to identify essentially all laws and regulations to which the company is subject, and then identify instances of non-compliance (without regard to materiality), is not reasonably practical and represents a management function.
2. Conducting a financial statement audit applying the Amendments would greatly increase the amount of time necessary to perform the audit, thus significantly increasing costs and audit fees. Significant unnecessary additional pressure on the ability to complete the annual financial statement audit in the required time frames would also occur. Combining these factors with the lack of consideration of materiality, it does not appear that an adequate cost benefit consideration was made by the Board. The expense and effort required to implement the Amendments could further exacerbate the trend of companies avoiding the public markets for obtaining new capital. Also, the engagement of smaller audit firms could be a difficult challenge and possibly impede auditor rotation.



3. The Amendments would exceed legal expertise currently required to perform a financial statement audit and would significantly increase the utilization of legal specialists, thus again resulting in significant cost and audit fee increases. The Board does not adequately address the relationship of the Amendments to existing loss contingency auditing standards or the potential impact on AS 2505: *Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments*. Issues relating to attorney/client privilege are likely to occur.
4. The PSC has significant concerns with the proposed elimination of relevant language in existing AS 2405. For example, eliminating the statements (a) "an audit made in accordance with PCAOB standards provides no assurance that illegal acts will be detected..." (b) "an auditor ordinarily does not have sufficient basis for recognizing possible violation of such laws and regulations" and (c) "the determination as to whether a particular act is illegal would generally be based on advice of an informed expert qualified to practice law" may create an expectation gap with stakeholders that the financial statement audit provides reasonable, or absolute, assurance that any noncompliance with laws and regulations will be detected regardless of materiality. The proposed increase in auditor responsibility and liability may have an unintended consequence of focus reduction on the actual financial statement portion of the audit.
5. The Amendments raise concerns regarding the impact on a company's internal controls over financial reporting due to increased burdens on both in-house and external legal counsel in identifying all laws and regulations to which the company is subject and instances of noncompliance, regardless of materiality. As stated above, under the Amendments, the financial statement audit would take on characteristics of an operational compliance audit, ignoring the key objective of a financial statement audit which is to provide reasonable assurance that such statements are materially correct and present fairly the financial position, results of operations and cash flows of the client company.

Finally, the PSC does not believe that it is in the best interest of auditors or the public to implement the Amendments as proposed considering the polarized views of members of the Board. A controversial change in current standards of this magnitude will have far-reaching effects on the audit profession that will need the full support of the Board to successfully implement. Furthermore, the PSC believes that the dissenting opinions of Board members have considerable merit and should be carefully reconsidered by the full Board.

The PSC believes that issuing additional interpretive guidance regarding illegal acts would be a more effective alternative to the Amendments and recommends that interpretive guidance considered, but rejected, on page 88 of the Amendments (Section D) should be reconsidered by the Board.

We appreciate the opportunity to provide feedback on PCAOB Release 2023-003: Auditing Standards related to a Company's Noncompliance with Laws and Regulations.

Sincerely,



Jeffrey L. Johanns, CPA
Chair, Professional Standards Committee
Texas Society of Certified Public Accountants